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August 1, 1997

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

BY HAND DELIVERY

Mr. William Caton  
Office of the Secretary  
Federal Communications Commission  
1919 M Street, Room 222  
Washington, D.C. 20554

Re: In the Matter of Implementation of the Pay  
Telephone Reclassification and Compensation  
Provisions of the Telecommunications Act of  
1996, CC Docket No. 96-128

Dear Mr. Caton:

Please find enclosed for filing the original and four copies  
of the RBOC/GTE Payphone Coalition's Comments on and Opposition to  
the APCC's Motion for Clarification or in the Alternative  
Reconsideration.

Attached in a separate envelope is an extra copy to be date-  
stamped and returned.

Sincerely,

*Michael Kellogg/KSC*

Michael K. Kellogg

Enclosures

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BEFORE THE  
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WASHINGTON, D.C.

In the Matter of

Implementation of the Pay Telephone )  
Reclassification and Compensation ) CC Docket No. 96-128  
Provisions of the )  
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THE RBOC/GTE PAYPHONE COALITION'S  
COMMENTS ON AND OPPOSITION TO  
THE APCC'S MOTION FOR CLARIFICATION  
OR IN THE ALTERNATIVE RECONSIDERATION

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**THE RBOC/GTE PAYPHONE COALITION'S  
COMMENTS ON AND OPPOSITION TO  
THE APCC'S MOTION FOR CLARIFICATION  
OR IN THE ALTERNATIVE RECONSIDERATION**

Once again repeating arguments the Bureau has seen -- and rejected -- time and again, the American Public Communications Council ("APCC") has petitioned for clarification or reconsideration of the Bureau's April 4th Order concerning tariffing of payphone services. See Order, Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket 96-128 (rel. Apr. 4, 1997) (emphasis added) ("April 4 Order"). The members of the RBOC/GTE Payphone Coalition hereby jointly oppose the APCC's petition.<sup>1</sup>

In its April 4 Order, the Bureau indicated that "the requirement to file federal tariffs [for payphone services] applies only to payphone-specific, network-based, unbundled features and functions provided to others or taken by a LEC's

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<sup>1</sup> The members of the RBOC/GTE Payphone Coalition are Ameritech, the Bell Atlantic telephone companies, BellSouth Corporation, GTE Service Corp. and the GTE telephone companies, NYNEX Corporation, Pacific Bell, Nevada Bell, and Southwestern Bell Telephone Company, and U S WEST, Inc.

operations, such as answer supervision and call screening." Id. ¶ 18 (emphasis added). The APCC now argues that the Bureau should clarify that a "payphone-specific" feature is any "feature that [a PSP] may require or find useful in configuring its [payphone] service," APCC Pet. at 3-8, and that the term "unbundled feature" includes any feature available with, but not automatically provided with, a basic payphone line. Id. at 8-10.

These proffered definitions, however, do not in any way "clarify" the Bureau's April 4 Order. To the contrary, their adoption would represent a reversal in course and sow confusion where clarity previously reigned. Because the APCC's arguments in favor of the proposed "clarifications" find no support in the Bureau's April 4 Order or in the payphone orders themselves, and because the proposed "clarifications" do not clarify but instead bemuddle and confuse, the Bureau should deny the APCC's petition.

**I. THE BUREAU SHOULD REJECT THE APCC'S ATTEMPT TO REQUIRE THE TARIFFING OF ALL FEATURES "USEFUL" TO PSPs**

In its Reconsideration Order, the Commission mandated that "any unbundled network features provided to a LEC payphone operation must be available on a nondiscriminatory basis to independent payphone providers and must be tariffed in the federal and state jurisdictions." Order on Reconsideration, Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket 96-128, ¶ 165 (rel. Nov. 8, 1996) ("Reconsideration Order"). Expanding on this requirement, the Bureau's April 4 Order explains that "the requirement to file federal tariffs

applies only to payphone-specific, network-based, unbundled features and functions provided to others or taken by a LEC's payphone operations." April 4 Order ¶ 18. The Bureau also indicated that this requirement did not extend to non-network services such as inside wiring, or to features and functions that are "generally available to all local exchange customers and are only incidental to payphone service, such as touchtone services and various custom-calling features." Id.

The APCC now argues that the term "payphone-specific" comprehends all "features that [a PSP] may require or find useful in configuring its [payphone] service." APCC Pet. at 3-4. This gloss, however, clearly represents an over-expansion of the term "payphone-specific." Surely not every feature a PSP *might* find useful is "payphone-specific." To the contrary, PSPs presumably find push button (rather than pulse) service to be "useful" or even "require[d]" when providing payphone service. Yet this is precisely the type of service the Bureau held not to be payphone-specific, because it was generally available to all local exchange customers. See April 4 Order ¶ 18.

Thus, far from making the Bureau's April 4 Order clearer, the APCC's proposed clarification promises only to sow confusion. Besides, no clarification is required, as the April 4 Order is already clear. If a feature is "payphone-specific," i.e., directed predominantly toward or used predominantly by payphone service providers, it must be federally tariffed (if it also is unbundled and network-based). But if it is generally available

to all local exchange customers and only incidental to PSPs, the feature is not payphone-specific and need not be tariffed at the federal level. April 4 Order ¶ 18.<sup>2</sup>

For this reason, the APCC's arguments concerning U S WEST's CUSTOMNET service (presumably offered by way of example) is entirely incorrect. See Opposition of U S WEST Communications, Inc., Implementation of Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket 96-128 (filed May 20, 1997). CUSTOMNET service is "generally available to all local exchange customers and . . . [is] only incidental to payphone service." April 4 Order ¶ 18. Indeed, CUSTOMNET is used by hotels, hospitals, universities, other business establishments, and by residential customers as well. In total, over seventy percent of the lines using CUSTOMNET are not associated with PSPs. How the APCC can contend that this feature is payphone-specific when the vast majority of users are not PSPs is a mystery.<sup>3</sup>

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<sup>2</sup> Thus, for example, call blocking functions that are offered to all local exchange customers and used primarily by non-PSP customers need not be tariffed. In contrast, call blocking features that are used predominantly by PSPs must be tariffed. Contrary to the APCC's suggestion, the Bureau did not require that all call screening and call blocking offerings must be tariffed. APCC Pet. at 6-7. In fact, the Bureau stated that any payphone-specific function that is offered on an unbundled basis to independent or LEC PSPs must be federally tariffed. April 4 Order ¶ 18. Thus if a feature such as call screening is not payphone-specific or is offered only on a bundled basis, no tariffing requirement applies.

<sup>3</sup> U S WEST offers other payphone-specific call screening and call blocking services, like Billed Number Screening, Call Blocking for 10XXX1+/10XXX011+, and International Blocking. All of these services have been unbundled and made available under state and

In any event, whether U S WEST's tariff filings are complete (or its decision not to tariff CUSTOMNET was correct) is not properly before the Bureau here. Whether individual BOCs properly tarified their services is not within the scope of issues presented by the April 4 Order. Instead, that question was addressed by the Bureau's April 15 Orders concerning BOC CEI plans.<sup>4</sup> The APCC appears to concede as much, admitting that individual challenges to BOC determinations as to which network services are payphone-specific -- and thus must be federally tarified if offered on an unbundled basis -- should be raised in

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federal tariffs. If the APCC wants U S WEST to unbundle and tariff CUSTOMNET as well, the APCC should submit an appropriate request under ONA. Pursuant to the ONA process, a BOC is to consider such a request in light of "market demand, utility as perceived by [PSPs], and costing and technical feasibility." Memorandum Opinion and Order, Filing and Review of Open Network Architecture Plans, 4 FCC Rcd 1, ¶ 396 (1988). The APCC, however, does not want its request considered under these criteria, because it cannot show feasibility and demand.

<sup>4</sup> Order, Bell Atlantic Telephone Companies' Comparably Efficient Interconnection Plan for the Provision of Basic Payphone Services, CC Docket 96-128, DA 97-791, ¶¶ 11-15, 40-42 (rel. Apr. 15, 1997); Order, BellSouth Corporation's Offer of Comparably Efficient Interconnection to Payphone Service Providers, CC Docket 96-128, DA 97-792, ¶¶ 14-17, 35-39 (rel. Apr. 15, 1997); Order, The NYNEX Telephone Companies' Offer of Comparably Efficient Interconnection to Payphone Service Providers, CC Docket 96-128, DA 97-793 ¶¶ 14-19, 41-46 (rel. Apr. 15, 1997); Order, Southwestern Bell Telephone Company's Comparably Efficient Interconnection Plan for the Provision of Basic Payphone Services, CC Docket 96-128, DA 97-795, ¶¶ 13-17, 37-43 (rel. Apr. 15, 1997); Order, Pacific Bell and Nevada Bell Comparably Efficient Interconnection Plan for the Provision of Basic Telephone Service Order, CC Docket 96-128, DA 97-794, ¶¶ 14-18, 43-49 (rel. Apr. 15, 1997); Order, U S WEST's Comparably Efficient Interconnection Plan for Payphone Services, CC Docket 96-128, DA 97-796, ¶¶ 13-20, 44-51 (rel. Apr. 15, 1997).

the context of CEI plan review, and need not be addressed here.<sup>5</sup> Indeed, the APCC has raised this very issue in an Application for Review of the Bureau's order approving U S WEST's CEI Plan. Consolidated Application of the American Public Communications Council for Review of the CEI Orders, Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket 96-128, 12 (filed May 15, 1997). Accordingly, the APCC's contentions regarding U S WEST are not only meritless, but irrelevant to this proceeding.

In sum, the APCC's proposed definition of "payphone-specific" does nothing to "clarify" the Bureau's April 4 Order. To the contrary, because the APCC's proposal represents an unwarranted attempt to expand that term beyond its plain meaning and beyond any definition contemplated by the April 4 Order or any other payphone order, the petition must be denied.

## **II. THE APCC'S ARGUMENT FOR GREATER UNBUNDLING SHOULD BE REJECTED**

Not content with its attempt to over-expand the meaning of the term "payphone-specific," the APCC also attempts to redefine the term "unbundled." In particular, the APCC asks the Bureau to clarify that the term "unbundled features" includes "all features that are available but not automatically provided with the basic payphone line." APCC Pet. at 8-10. But this is merely an attempt to resurrect, under the guise of "clarification," an

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<sup>5</sup> See APCC Pet. at 7 n.12 (conceding that challenges to BellSouth's tariff filings are properly raised on review of CEI plan orders, and not on review of the Bureau's April 4 Order).



argument the Bureau already has rejected as over-broad and unsupported.

Seeking to expand the scope of the federal tariffing requirement once before, the APCC argued to the Bureau that there should be a "single" basic payphone line that would "serve as a building block to which additional features and functions would be added as options." See April 4 Order ¶ 14. Consistent with this approach, the APCC argued that each feature that does not form part of the single, basic payphone line is an "unbundled feature or function" that must be federally tariffed. Id. The Bureau, however, rejected that argument. Instead, tariffing is required at the federal level only where a feature is "unbundled" in the normal sense of that word -- i.e., where it is offered separately, on an individual a la carte basis, rather than as part of a larger package or bundle. Id. ¶ 16.

Now the APCC is raising the same argument once again, and in almost identical terms. Just as it did before, the APCC argues that "all features that are available but not automatically provided with the basic payphone line" are "unbundled" and must be federally tariffed. APCC Pet. at 8-10; cf. April 4 Order ¶ 14 (describing the APCC's earlier argument). But the APCC nowhere explains why the Commission's prior decision -- which rejected the APCC's argument -- is wrong. For this reason alone, the petition should be rejected. See 47 C.F.R. § 1.106(d)(2) (petition for reconsideration must identify the Commission's error with reasonable specificity).

Besides, the APCC's proposed definition is absurd. A feature is "unbundled" if it can be purchased separately from other features, on an *a la carte* basis. If it cannot, and is only available as a bundled package, it is a "bundled" feature and need not be separately tariffed. The fact that one bundled package includes a particular feature and another bundled package does not include the feature does not *ipso facto* make the feature "unbundled." As the Bureau explained, "if a LEC provides answer supervision bundled with the basic payphone line, the LEC is required neither to unbundle that service from its state tariff for payphone service, nor federally tariff that service." April 4 Order ¶ 16. Unbundling is required only when the LEC provides the function on an unbundled, *i.e.*, *a la carte*, basis. Id. ¶ 18.

For this reason, the APCC's arguments about NYNEX's tariff filings (APCC Pet. at 12) are not only procedurally improper, but also entirely wrong. As explained above, arguments about individual BOC compliance with tariffing requirements cannot be raised here because the April 4 Order did not address individual BOC compliance issues. Instead, such arguments had to be raised in the context of the Bureau's CEI plan review orders, the order which did address those issues. And the APCC's arguments about NYNEX's tariffs are wrong in any event because, as explained above, the payphone orders do not require that any particular feature or function be unbundled except where the LEC offers that

feature or function to an affiliated PSP on an unbundled basis<sup>6</sup> — a rule NYNEX has followed to the letter. NYNEX offers the two basic types of lines (i.e., Public Access Lines and Public Access Smart-pay Lines) to all payphone providers. There are four bundled Public Access Smart-pay lines that are used to provide NYNEX payphone services.<sup>7</sup> Because NYNEX does not use or offer any “unbundled” network functions, no further federal tariffing was required. See The RBOC Payphone Coalition's Comments on and Oppositions to Applications for Review of the Payphone CEI Plan Orders, Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket 96-128, 9-10 (filed June 30, 1997).

In the end, the APCC's second proposed “clarification,” like its first, not only fails to clarify anything but would do much to confuse everything. Accordingly, the APCC's proposed redefinition of the term “unbundled,” like its proposed over-expansion of the terms “payphone-specific,” should be rejected.

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<sup>6</sup> The Order on Reconsideration explains that, “as required by the Report and Order, any basic network services or unbundled features used by a LEC's operations to provide payphone services must be similarly available to independent payphone providers on a nondiscriminatory, tariffed basis. Those unbundled features or functions must be tariffed in the state and federal jurisdiction.” Reconsideration Order at 76, ¶ 162.

<sup>7</sup> These services are One-Way Basic Coin Access Line (outgoing-only service with full central office-based coin functionality), Two-Way Basic Coin Access Line (allows both incoming and outgoing service with full coin functionality), Inmate Public Access Line (outgoing-only coinless service limited to collect calls only), and Charge-a-Call Public Access line (allows outgoing-only coinless calls to 0+ for calling card billing).

**Conclusion**

The APCC's Motion should be denied.

Respectfully submitted,

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Counsel for the RBOC/GTE Payphone  
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August 1, 1997

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of August, 1997, I caused copies of the foregoing RBOC/GTE Payphone Coalition's Comments on and Opposition to the APCC's Motion for Clarification or in the Alternative Reconsideration to be served upon the parties listed below by first-class mail.

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